

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

La Verne Koenig,)
)
Plaintiff,)
)
vs.)
)
John Hoeven, Governor, Wayne Stenehjem,)
Attorney General for the State of North)
Dakota, Adams County States Attorney,)
Barnes County States Attorney, Benson)
County States Attorney, Billings County)
States Attorney, Bottineau County States)
Attorney, Bowman County States Attorney,)
Burke County States Attorney, Burleigh)
County States Attorney, Cass County States)
Attorney, Cavalier County States Attorney,)
Dickey County States Attorney, Divide)
County States Attorney, Dunn County)
States Attorney, Eddy County States)
Attorney, Emmons County States Attorney,)
Foster County States Attorney, Golden)
Valley County States Attorney, Grand Forks)
County States Attorney, Grant County)
States Attorney, Griggs County States)
Attorney, Hettinger County States Attorney,)
Kidder County States Attorney, LaMoure)
County States Attorney, Logan County)
States Attorney, McHenry County States)
Attorney, McIntosh County States Attorney,)
McKenzie County States Attorney, McLean)
County States Attorney, Mercer County)
States Attorney, Morton County States)
Attorney, Mountrail County States)
Attorney, Nelson County States Attorney,)
Oliver County States Attorney, Pembina)
County States Attorney, Pierce County)
States Attorney, Ramsey County States)
Attorney, Ransom County States Attorney,)
Renville County States Attorney, Richland)
County States Attorney, Rolette County)
States Attorney, Sargent County States)
Attorney, Sheridan County States Attorney,)

Case No. 2:10-cv-50

Sioux County States Attorney, Slope)
 County States Attorney, Stark County States)
 Attorney, Steele County States Attorney,)
 Stutsman County States Attorney, Towner)
 County States Attorney, Traill County)
 States Attorney, Walsh County States)
 Attorney, Ward County States Attorney,)
 Wells County States Attorney, and)
 Williams County States Attorney, all in)
 their official and individual capacities, and)
 their successors in office,)
)
 Defendants.)

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court has received a Report and Recommendation from the Honorable Karen K. Klein, United States Magistrate Judge, pursuant to 28 U.S.C. § 636, recommending Plaintiff La Verne Koenig's Complaint against 52 of the Defendants be dismissed without prejudice; the Complaint against Defendant Traill County States Attorney be dismissed with prejudice; and the causes of action for monetary damages against Governor John Hoeven and Attorney General Wayne Stenehjem be dismissed with prejudice (Doc. #3). Koenig has filed objections to the Magistrate Judge's Report and Recommendation (Doc. #8).

The Court has conducted a *de novo* review of the record, including Koenig's objections. Upon careful consideration, the Court agrees with the magistrate judge's analysis and conclusions. Because Koenig lacks standing to bring suit against the States Attorneys in the counties that did nothing to cause Koenig's alleged injuries, the Complaint is **DISMISSED WITHOUT PREJUDICE** as to those defendants, including the Adams County States Attorney, Barnes County States Attorney, Benson County States Attorney, Billings County States Attorney, Bottineau County States Attorney, Bowman County States Attorney, Burke County

States Attorney, Burleigh County States Attorney, Cass County States Attorney, Cavalier County States Attorney, Dickey County States Attorney, Divide County States Attorney, Dunn County States Attorney, Eddy County States Attorney, Emmons County States Attorney, Foster County States Attorney, Golden Valley County States Attorney, Grand Forks County States Attorney, Grant County States Attorney, Griggs County States Attorney, Hettinger County States Attorney, Kidder County States Attorney, LaMoure County States Attorney, Logan County States Attorney, McHenry County States Attorney, McIntosh County States Attorney, McKenzie County States Attorney, McLean County States Attorney, Mercer County States Attorney, Morton County States Attorney, Mountrail County States Attorney, Nelson County States Attorney, Oliver County States Attorney, Pembina County States Attorney, Pierce County States Attorney, Ramsey County States Attorney, Ransom County States Attorney, Renville County States Attorney, Richland County States Attorney, Rolette County States Attorney, Sargent County States Attorney, Sheridan County States Attorney, Sioux County States Attorney, Slope County States Attorney, Stark County States Attorney, Steele County States Attorney, Stutsman County States Attorney, Towner County States Attorney, Walsh County States Attorney, Ward County States Attorney, Wells County States Attorney, and Williams County States Attorney.

With regard to the alleged injuries caused by the Traill County States Attorney, the Court finds the prosecutor is immune from civil suit. Imbler v. Pachtman, 424 U.S. 409, 424-28 (1976). Accordingly, the Complaint is **DISMISSED WITH PREJUDICE** as to the Traill County States Attorney.

As to the remaining defendants, Governor John Hoeven and Attorney General Wayne Stenehjem, to the extent Koenig's Complaint seeks monetary damages against these defendants,

those causes of action are **DISMISSED WITH PREJUDICE**.

Koenig's request for a hearing on his objections is **DENIED**.

Koenig's request for an order granting certification of class action and appointment of counsel are **DEFERRED** until the remaining defendants have been given an opportunity to respond.

IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 20th day of July, 2010.

/s/ Ralph R. Erickson

Ralph R. Erickson, Chief Judge
United States District Court